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26. And the courts will presume the endorsement was made at the time and place stated on the face of the note; or at the time and place of its execution: *Dawson* v. *Vaughan*, 42 Ind. 395; *Patterson* v. *Carrell*, 60 Id. 128; *Kestner* v. *Spath*, 53 Id. 288; *contra*, *Edwards* v. *Shields*, 7 Bradw. 70. If it appears that note was endorsed in another state, and the law of that state on the liability of endorsers is not plead and proven, the common law of the forum will be applied in adjudging the rights of the parties: *Patterson* v. *Carrell*, *supra*. Executed in one state and endorsed in another, liability is fixed by the law of the latter state: *Schuttler* v. *Piatt*, 12 Ill. 417.

W. W. THORNTON.

Crawfordsville, Ind.

(*To be continued.*)

RECENT ENGLISH DECISIONS.

Court of Appeals.

CLARKE *v.* MILWALL DOCK COMPANY.

Things belonging to a third person, which are on the demised premises for the purpose of being wrought up or manufactured by the tenant in the way of his trade, are not privileged from distress by the landlord, unless they have been sent or delivered by such third person to the tenant for that purpose.

APPEAL from a judgment of POLLOCK, B. Claim for 1721*l.* as damages for the wrongful detention by the defendants of a ship called the Swillington, the property of the plaintiff as executor of W. France, deceased.

The defence in substance was that the defendants lawfully detained the ship upon premises occupied by one Gilbert, as tenant to the defendants, under a distress for arrears of rent due from him to them; that they detained the ship for a reasonable time, until they were paid the sum of 1721*l.*, being the amount of arrears of rent, and then delivered it to the plaintiff and Gilbert.

The action was tried by POLLOCK, B., without a jury, at the Middlesex sittings in June 1885, when the material facts proved in evidence, or admitted, were as follows:

In 1882, Gilbert contracted to build for France a steamship according to certain specifications and models. The contract was contained in correspondence between the parties, and by the terms of it the price was to be 8000*l.*, to be paid by nine equal instalments,

each instalment to become due as certain specified parts of the ship were completed.

Gilbert began the work about the end of November 1882, in a dry-dock occupied by him as tenant to the defendants.

France died on the 27th of August 1883, and the plaintiff was the sole executor of his will.

On the 11th of September 1883, the defendants seized the ship upon the premises let to Gilbert, under a distress for arrears of rent, amounting to 1721*l.*, due from Gilbert to them in respect of his tenancy of the dry-dock.

The ship was detained by the defendants under the distress until the 2d of October 1883, when the plaintiff paid the sum of 1721*l.* to the defendants under protest, in order to obtain the release of the ship, and the defendants thereupon gave up possession of the ship.

At the date of the execution of the warrant of distress, the ship was nearly completed, and France had paid all the instalments due under his contract with Gilbert as each part of the ship was built.

During the progress of the work the materials and things necessary to carry out the building of the ship were supplied to Gilbert by the various makers thereof, and no materials had been sent or delivered by France or the plaintiff to Gilbert to be used for the building of the ship.

On these facts, POLLOCK, B., gave judgment for the defendants, holding that the ship was not privileged from distress for rent at the time the defendants seized and detained it, and therefore that the detention was lawful.

The plaintiff appealed.

Finlay, Q. C., (*McCall*, with him), for the plaintiff.

Cohen, Q. C., and *W. Graham*, for the defendants.

HERSCHELL, L. C.—The sole question in this case is whether an unfinished ship, which was being built for the plaintiffs, in a dry-dock rented by the builder from the defendants, was or was not exempt from distress for rent. The defendants distrained the ship, and the plaintiff alleges that the distress was unlawful because the property was in him, and the circumstances were such as to exempt the ship from distress. There is no question that, prima facie, all goods found on the demised premises are subject to distress, but it is said that this case comes within one of the exceptions which have

been engrafted on the general law. The facts are that Gilbert, having rented the dry-dock from the defendants, entered into a contract with the plaintiff's testator to build for him this ship; the price was to be paid in equal instalments, each instalment becoming due as certain portions of the ship were completed. The instalments due had been paid and the work was approaching completion. It is not necessary to decide whether, when the instalments were paid, the property in the ship passed to the plaintiff, though the case of *Clark* v. *Spence*, 4 A. & E. 448, certainly affords strong ground for saying that it did pass. Assuming that it did, it is, at least, equally clear from the same case that Gilbert was entitled to retain the ship for the purpose of finishing it and earning the rermaining instalments. The exception which is said to apply here is that described in the 2d rule stated by WILLES, C. J., in *Simpson* v. *Hastopp*, Willes 512. That rule has been laid down in substantially the same terms in *Gisbourn* v. *Hurst*, 1 Salk. 249. It was repeated in *Muspratt* v. *Gregory*, 1 M. & W. 633, 3 Id. 677, and has been acted upon in many other cases. Assuming that, as I have said, the property of the ship was in the plaintiff when the distress was made, the case is one of property belonging to another being on the demised premises, and so far, therefore within the rule. I agree also that the ship was on Gilbert's premises for the purpose of being "wrought, worked up, or managed in the way of his trade or employ." But it is contended by the defendants that, though on Gilbert's premises for these purposes, there was no thing delivered to him within the meaning of the exception. On the other hand it is said that there need not be a delivery; that it is enough if the goods are on the premises for the purpose of being wrought and worked up; and that when the principle is looked at upon which the exception is founded, it does not necessarily involve the idea of delivery. But I am of opinion that we are limited in this case by the strict terms of the exception. It is very difficult to find any sound principle upon which to explain the law of distress and to support the various decisions. No doubt the general law which enables a landlord to distrain the goods of a third person upon the tenant's premises is, as was said in the argument, anomalous, and the exception in question is also anomalous. I think that we cannot go beyond the terms of the definition of the exception. There have been many cases in which the courts would be disposed to go beyond those terms, as in *Wood* v. *Clarke*, 1 C. & J. 484, but in that case it was held that,

though materials delivered by a manufacturer to a weaver to be manufactured by him on his own premises were privileged from distress, a frame delivered with the materials to be used in the manufacture was not privileged, unless there was otherwise a sufficient distress upon the premises, because it did not come within the terms of the exception. Looking at the terms of the exception it is as much a necessary part of it that the goods should be delivered for the purpose of being wrought, worked up, or managed in the way of trade, as that they should be on the demised premises for those purposes. There is no more reason for rejecting the term "delivered" from the exception than there is for rejecting the term with respect to the goods being on the demised premises to be wrought, &c., in the way of trade. I am of opinion that the exemption must be limited to cases in which there has been a delivery for the purpose of trade, and that it does not extend to all cases in which goods are on the premises for those purposes. If we might consider the question of principle, delivery of the goods for the purposes of trade may be essential, because the exception was probably founded on the view, that when a person having the right to possession, parts with the possession, and intrusts his goods to another for the purposes specified in the exception, and by parting with the possession renders the goods physically subject to seizure upon that other's premises, the goods ought not to be thereby rendered liable at law to distress.

I do not mean to decide that that is the principle, but it may as well be that as any other principle. It is sufficient here to say that we cannot reject the word "delivered" in applying the exception. It was said, on behalf of the plaintiff, that the term "delivered" is not found in the exception as stated by Coke (Coke, Litt. 47 a) and Blackstone (3 Comm. 8), and in some of the older authorities. True, but both in Coke and Blackstone the exception is stated in terms so large as to include cases with respect to which a course of decisions has established that the goods are not privileged from distress; and all the illustrations given by Coke and Blackstone of cases within the exception, imply the idea of delivery of the goods for the specified purposes. In the present case there was no delivery in any sense of the term. The goods were originally in the possession of Gilbert for the purpose of building the ship; they remained in his possession until the first instalment was paid, and up to that time were liable to distress for rent owing to his landlord. After

the first instalment was paid, the possession remained in Gilbert, and France and the plaintiff, as his executor, had only the property in them. That being so, can it be said that, giving the widest interpretation to the term "delivered," there was any delivery here within the meaning of the exceptions? I think the facts dispose of the suggestion that there was any such delivery. As to the illustrations put in the argument, when an article is delivered to be repaired or altered the privilege of the exception would clearly apply, and when a carriage is built for a purchaser, and when it has been completed and paid for, the purchaser allows it to remain on the builder's premises for the purpose of having some alterations made, I will not say that those facts might not constitute a delivery within the meaning of the exception, because the purchaser having the right to possession has intrusted the possession to the builder for the purpose of altering the carriage. Here the purchaser of the ship never had the right to possession at any time. He had the property in the ship, but the possession always remained with Gilbert.

I arrive at my conclusions in this case with some regret, but the exception has been laid down in these terms and acted upon for so many years, that it is now impossible to extend it by judicial construction. If extended it must be by the interference of the legislature. For these reasons I am of the opinion that the decision of POLLOCK, B., was right, and must be affirmed.

Lord ESHER, M. R.—The law with respect to goods privileged from distress is part of the common law. It has been stated over and over again, and is final by the judgment of WILLES, C. J., in *Simpson* v. *Hartop*, Willes 512. That learned judge's statement of the law was made after very careful consideration, and has always been accepted as true and correct. He laid down five exceptions to the general law in the form of rules. Some of these rules apply to goods which are the property of the person upon whose premises the distress is made. The rule in question applies to goods which are the property, not of the person upon whose premises the distress is made, but of another, and it is in these terms: "Things delivered to a person exercising a public trade to be carried, wrought, worked up, or managed in the way of his trade or employ." Afterward, in the same judgment, the chief justice stated the rule again, and pointed out the reason for it, thus: "Things sent or delivered

to a person exercising a trade, to be carried, wrought, or manufactured in the way of his trade, as a horse in a smith's shop, materials sent to a weaver, or cloth to be made up, are privileged for the sake of trade or commerce, which could not be carried on if such things, under these circumstances, could be distrained for rent due from the person in whose custody they are." Now all the exceptions are stated in the form of rules, not of principles; and that distinction was upheld by the Court of Exchequer Chamber in *Muspratt* v. *Gregory*, 1 M. & W. 633, 3 Id. 677, where the court was asked to find that they were principles, but refused to do so. The rule in question is stated to be "for the sake of trade and commerce." If that reason, contained in the rule itself, as stated by WILLES, C. J., be the real reason for the rule, I think it is absolutely necessary to say that the words "sent or delivered" form an essential part of it. It is the principal essence of the rule, contained in the first part of it, and founded upon the idea that a man would not send or deliver goods if they were liable to be distrained upon. They are to be sent by a person whose property they are, and they are to be sent to a person exercising a trade, to be wrought, etc., "in the way of his trade or employ." If something is delivered which it is not part of his trade or employment to deal with, the thing delivered is not privileged from distress. The case was put in argument of goods not sent or delivered, but manufactured into some article upon the tenant's premises, and it was said that under certain circumstances there might be something equivalent to a delivery within the meaning of the rule. I should say that it is true, if the article to be manufactured has been completed, and the person who has the property in it leaves it upon the demised premises in order to have some alteration made, because the law would not require him to go through the idle ceremony of taking the article away and returning it. In such a case I think there would be an equivalent to delivery of the thing manufactured. Here nothing was sent or delivered in any sense. I will assume, as the Lord Chancellor has done, that the property in the ship passed to the plaintiff or his testator when the instalments of the price were paid, but it is a necessary implication from the contract that the ship-builder had the right to possession, and the plaintiff had no such right, until the ship was completed. The plaintiff never had possession of the ship in fact; he never sent or delivered it to Gilbert, and there was nothing in the transaction between them equiv-

alent to sending or delivering. I am, therefore, of opinion that the rule does not apply to this case, and that the ship was not privileged from distress under the circumstances.

FRY, L. J.—I am of the same opinion. The statement of the rule in *Gisbourn* v. *Hurst*, 1 Salk. 249, was accepted in *Simpson* v. *Hartopp*, Willes 512, which has ever since been the leading case on the subject, and all the illustrations of that rule involve the idea of sending or delivery of some article to the person on whose premises the distress is made. I am of opinion that we are not at liberty to depart from that rule, which was also accepted as a binding exposition of the law in the year 1838, in *Muspratt* v. *Gregory*, 1 M. & W. 633; 3 Id. 677. It is to be observed that in all cases to which the rule has been applied there was, in fact, a sending or delivery. In *Muspratt* v. *Gregory*, the court clearly thought that the sending or delivery was an important part of the rule; and it is impossible not to see that sending or delivery is important in considering the question of principle. The rule would be greatly enlarged if the words "sent or delivered" were struck out, because, as it stands, the rule only applies where the right to possession in the goods has been in the person for whom they are being wrought or manufactured. I assume that the property was in the plaintiff in this case, but in order to make the rule apply, I think that both the property and the right to possession should be in a person who delivers the goods for the purpose of having them wrought, &c., in the way of trade. There is no pretence for saying that the plaintiff was entitled to possession of the ship in question here. There may, perhaps, be cases in which a constructive delivery would be sufficient, but here there was no equivalent for actual delivery. I am of opinion that the defendants are entitled to our judgment. Appeal dismissed.

Exemption from Distress. "*Benefit of Trade.*"—At common law, the landlord could distrain for rent upon any goods found upon the demised premises: Taylor Land. & Ten. § 583; Wood. Land. & Ten. § 543; 3 Blk. Com. 8; even though they belonged to some third person: 3 Blk. Com. 7; *Keller* v. *Weber*, 27 Md. 660; *Spencer* v. *McGowen*, 13 Wend. 256; *Blanche* v. *Bradford*, 38 Penn. St. 344; *Kessler* v. *McConachy*, 1 Rawle 435; *Adams* v. *La Comb*, 1 Dall. 440; *Kleber* v. *Ward*, 88 Penn. St. 93. To this general rule, subjecting the goods of a stranger to distress by a landlord, there is an important exception. "Things delivered to any person (tenant) exercising a public trade or employment, to be carried, wrought or managed, in the way of his trade or employ, are for that time under a legal protection, and privileged from distress for

rent:" *Gisbourn* v. *Hurst*, 1 Salk. 249. See also, 2d exception in *Simpson* v. *Hartopp*, Willes 512.

This exception was very early established in the English law. In 10 Henry 7, p. 21, pl. 18, it was agreed by the court, that a horse in a hostelry could not be distrained, nor a robe being made up in a tailor shop. To the same effect are 22 Edw. 4, 49 b., and 7 Henry 7, 1 pl. 1. These early cases do not attempt to lay down any precise rule upon the subject, but merely enumerate certain special cases where the exemption applies. Nor do they agree as to the principle of the exemption. The cases of exemption cited do not present any very striking similarity. They are goods sent to a public market or fair to be sold; goods of a guest at an inn; a horse sent to a smith's to be shod; corn sent to a mill to be ground; goods sent to a tailor to be made up into clothes. In 7 Henry 7, 1, pl. 1, the court, speaking of the exemption of goods of a guest in a hostelry, and goods placed in a market or fair, say that it would be to the prejudice of the "common weal" to allow a distress in such a case. In 22 Edw. 4, 49, BRIAN, J., speaking of the exemption of goods of a guest at an inn, or a robe being made at a tailor's, seems to base the right of exemption upon the ground that the goods are there by the "authority of the law;" that the innkeeper or tailor is obliged to receive the goods, and has a lien upon them for his pay: In the case of *Read* v. *Burley*, reported twice in Cro. Eliz., once at p. 549, and again at p. 596, it appears, according, to the first report, that the plaintiff, a cloth-worker, left certain wool with the tenant, to spin into yarn. Afterwards, he came on horseback to get the yarn. It was necessary to weigh the yarn, and the tenant having no scales, he sent to the next village for some, and, in the meanwhile, the defendant distrained the yarn which was on plaintiff's shoulders, and also on plaintiff's horse. It was agreed by the entire court that the yarn was not distrainable, it being in the actual possession of the plaintiff. WALMSLEY, J., was of opinion that the horse was distrainable. He distinguished the case of a horse at an inn, on the ground that the exemption in that case is "in favor for the benefit of the commonwealth; because a common hostelry is a common place where men are to herbage." But BEAUMOND and OWEN, JJ., were of opinion that the horse was not distrainable. "For the trade of cloth-workers is necessary and to be favored; and this horse is not to be distrained, no more than a horse which carries corn to market, and is put into a friend's house for the time; he is not distrainable (which WALMSLEY denied). And where a horse carries corn to a mill, and is tied at the mill-doors during the grinding of the corn, he shall not be distrained (which WALMSLEY agreed): because it is a common place, and for the public weal: but they are not alike." It was afterwards adjudged that the distress was not lawful.

In the report of the case, Cro. Eliz. 596, the facts are differently stated. It is there stated that the plaintiff went with his horse and the yarn, to the premises of a neighbor, who had scales, and that the distress was made there. According to this report, ANDERSON, BEAUMOND, and OWEN, JJ., held the yarn and horse not distrainable, for the trade of a clothier is *pro bono publico*, who ought to be allowed all necessary means; and without doubt, cloth put to a weaver to be woven, or yarn in a house to be spun, are not distrainable (*quod* WALMSLEY agreed): and weighing is as necessary as the former; wherefore the yarn brought thither for that purpose, and the horse which brought it, are privileged, and are not distrainable. WALMSLEY, J., disagreed, "because it is not averred that it was a common beam, or place of weighing."

The earlier cases seem to base the exemption upon the most general ground

of public policy. In this case it is put upon a more limited ground, that of benefit to trade. But the judges give a very wide scope to benefit of trade. They seem to hold that when the goods are brought upon the premises for any purpose, in any way connected with trade, the goods are exempt. It is to be noticed that, in the second report, it appears that the goods were not distrained for the rent of the spinner, but for the rent owed by the owner of the scales. Moreover, the principle of "benefit of trade" was applied, not in the favor of the trade of the tenant, but in favor of that of the owner of the goods. WALMSLEY, who dissented, appears to have thought that the exemption was confined to goods in public places.

Lord COKE, in his Commentary upon Littleton, says, (Co. Litt. 47 a): "Valuable things shall not be distrained for rent, for benefit and maintenance of trades, which by consequent, are for the benefit of the Commonwealth, and are there by authority of law; as a horse in a smith's shop, shall not be distrained for rent issuing out of the shop, nor the horse, &c., in the hostelry, nor the materials in the weaver's shop, nor sacks of corn or meal in a mill, nor in a market, nor anything distrained for damage feasant, for it is in custody of law and the like." This seems to state a general principle rather than a fixed rule, and did not, in any way, limit the doctrine of the preceding cases.

In *Gisbourn* v. *Hurst*, 1 Salk. 249, goods were delivered to a private carrier to be carried from London to Birmingham. The carrier apparently lived somewhere on the road between London and Birmingham, and when he reached home he put his wagon with the goods into the barn, where it was, on the next day but one, distrained. It was held that the goods were exempt from distress. It was agreed by the court that "goods delivered to any person exercising a public trade or employment, to be carried, wrought or managed in the way of his trade or employ, are for that time under a legal protection, and privileged from distress for rent." The court at first doubted whether the fact that the carrier was a private, not a common carrier, did not make a difference, but finally held that it did not, "the privilege being in respect of the trades, and not in respect of the carrier." Here we have the exemption for benefit of trade stated in a much more restricted way than heretofore. It would seem that this statement of the exemption would not include the case of *Read* v. *Burly*, *supra*. This statement of the rule or principle of the exemption for the benefit of trade was borrowed by WILLES, J., in *Simpson* v. *Hartopp*, Willes 512.

In *Fowkes* v. *Joyce*, 3 Lev. 260, a drover driving cattle to the London market, put them into the tenant's close for the night, where they were distrained by the landlord. It was held that cattle were not exempt. The distinction between this case and *Gisbourn* v. *Hurst*, *supra*, seems to be, that in that case the goods were distrained on the premises of the carrier, and for his rent, while here, the cattle were distrained on the premises and for the rent of a third person.

So in *Crosier* v. *Tomkinson*, 2 Ld. Ken. 439, it was held that a landlord could distrain the horse of a guest at an inn, in a stable, sublet by the tenant to the innkeeper during certain races. This case seems to show that the exemption of goods of a guest is only from distress by the innkeeper's landlord.

In *Francis* v. *Wyatt*, 3 Burr. 1498, it was held that a carriage kept at a livery stable was not exempt from distress. The court distinguished the case of a horse or coach left at the stable of an inn by a guest, on the ground that in the latter case the innkeeper is obliged to take the property, and has a lien upon it for his charges, while, in the care of a livery stable keeper, the taking charge of the property is wholly a matter of contract.

In the former case the property is on the demised premises by "authority of law" in the latter case, not. It would seem, however, that the coach might have been held exempt, under the general rule exempting goods delivered to any person exercising a public trade, to be managed in the way of his employ. This point was taken by counsel, but seems to have been overlooked by the court, or else the court was of opinion that a livery stable keeper was not engaged in a public employ. But if the case intended to limit the exemption to employments, public in the sense in which an innkeeper's or carrier's occupation is public, it was clearly erroneous, and has been overruled. The case was followed in *Parsons* v. *Gingell*, 4 C. B. 545. In this country it has been held that horses and vehicles kept in a livery stable, are exempted from distress on the principle of "benefit of trade:" *Youngblood* v. *Lowry*, 2 McCord (S. C.) 39.

In *Wood* v. *Clarke*, 1 C. & J. 484, it was sought to exempt a stocking frame delivered by a hosiery manufacturer to a stocking weaver to work up yarn into stockings, on the theory of "benefit of trade," but the court held that it could not be exempted from distress on this theory, although it was alleged in the pleadings that it was the usage of trade to deliver frames to weavers, for the purpose of working up yarn. The court stated that the case did not fall within the authority of any decided cases, and refused to extend the principle beyond decided cases. (In *Simpson* v. *Hartopp*, Willes 512, and *Gorton* v. *Falkner*, 4 T. R. 565, it was held that, in such a case, the loom might be exempted as "utensils of trade," if there were other sufficient distress on the premises.)

These cases indicate a tendency to restrict narrowly the exemption of goods from distress on the theory of "benefit of trade." In the great case of *Muspratt* v. *Gregory*, 1 M. & W. 633, it was finally decided that this exception was not to be extended beyond the actual precedents—that it was not a general principle but a fixed rule of law. In that case, the terre-tenant was a salt manufacturer, and the course of his business was to deliver the salt upon boats of his customers, in a certain canal dug along side of the works. The plaintiff's boat, while in this canal for the purpose of being loaded with salt, was distrained. The majority of the Court of Exchequer were of opinion that the boat was not exempt on the theory of benefit of trade, because not within that exemption, as stated in *Simpson* v. *Hartopp*, or within any of the decided cases. ALDERSON, B., lays down the rule of that exemption as follows: "The true principle seems to be, that where, in order to the exercising such a public trade at the place in question, it is necessary that the goods should be delivered into the custody of the person carrying it on there, the law, in consideration of the benefit which the Commonwealth derives from the carrying on of the trade, protects from distress the goods so delivered." PARKE, B., dissented; he was of opinion that the "benefit of trade" exemption was a broad principle, and not a fixed rule. That the statement of that principle in *Simpson* v. *Hartopp*, was clearly too narrow, inasmuch as it did not cover the case of goods sent to market, or a horse or vehicle sent to or waiting for goods to be brought from the place where the trade is carried on, all of which cases come within the exemption. That the true principle was that goods necessarily placed upon the demised premises in the way of the tenant's trade, if that trade is to be made available to the public, were exempt; and that in the carrying on of the trade in the mode in which the salt manufacturer held himself out as carrying it on, that is by selling salt to all who should send their boats to his works, the delivery of the boats for the purpose of being loaded, was necessarily required.

The dissenting of PARKE, B., is marked by great learning and acumen, and is in no way unworthy of that very great judge. Nevertheless, the opinion of the majority prevailed, and the judgment of the court was affirmed on appeal, (3 M. & W. 678).

Indeed, in *Joule* v. *Jackson*, 7 M. & W. 450, PARKE, B., concurred in the decision of the court while holding that beer casks of a brewer, left at a public house while the beer was being drawn, were not exempt from distress, and stated that the case of *Muspratt* v. *Gregory*, had conclusively settled that the exemption ought not to be extended beyond the decided cases.

The words "public trade" occurring in Willes' second exemptions (stated in *Simpson* v. *Hartopp*, *supra*), have given the judges some difficulty. In *Gibson* v. *Ireson*, 3 Q. B. 39, the court confess that they are unable to define or state the exact meaning of the phrase "public trade or employ." They point out that it must mean something different from a public occupation, in the sense in which an innkeeper's or carrier's occupation is public, since it is conceded that a tailor is engaged in a "public trade" within the rule. Baron PARKE, in *Muspratt* v. *Gregory*, *supra*, said, that a "public trade" was merely a trade "carried on generally for the benefit of any persons who choose to avail themselves of it, as distinguished from a special employment by one or more particular individuals." This seems to be the true definition of the phrase.

And where a manufacturing company has an agency for the sale of its goods, and the agent rents the store where they are sold, and sells on commission, it seems that he does not carry on a "public trade or employ" within the meaning of the rule, and hence his landlord may distrain goods of his principal, stored on his premises awaiting sale: *Tapling & Co.* v. *Weston*, Cobabé & Ellis (Eng. Q. B. D.) 99. But *contra*, see *Howe Sewing Machine Co.* v. *Sloan*, 87 Penn. St. 438.

In the United States the exemptions for the benefit of trade are more liberally construed than in England. Thus in *Youngblood* v. *Lowry*, 2 McCord (S. C.) 39, it was held that vehicles and horses being kept in a livery stable, were exempt from distress for the livery-man's rent, and in *Riddle* v. *Welden*, 5 Whart. (Pa.) 9, it was held that the goods of a boarder were not liable to distress for rent, due from the keeper of the boarding house, and the court speak of *Francis* v. *Wyatt*, *supra*, as an "apocryphal case." So, in *Cadwalader* v. *Tindall*, 20 Penn. St. 422, it was held that cattle sent to be agisted, were exempt from distress by the agistor's landlord. But in *Karns* v. *McKinney*, 74 Penn. St. 387, where A. bought lumber of the tenant, and by his permission, left it on the premises, where he proceeded to work it up into barges, it was held that the property was not exempt from distress. And in *Price* v. *McCallister*, 3 Grant Cas. (Pa.) 248, it was held that a billiard table rented to a saloon-keeper, was not exempt from distress by saloon-keeper's landlord.

It is well settled, both in England and in this country, that the benefit of trade exemption covers goods left for purposes of sale or storage. Thus, in *Matthias* v. *Mesnard*, 2 C. & P. 353, it was held that corn sent to a factor for sale, and deposited by him in a warehouse, is, while there, exempt from distress by the warehouseman's landlord: *Thompson* v. *Mashiter*, 1 Bing. 283: *Connah* v. *Hale*, 23 Wend. (N. Y.) 462, accord. So, where the goods are stored by the factor on his own premises awaiting sale, they are not distrainable for rent due from him: *Gilman* v. *Elton*, 3 Brod. & B. 75; *Findon* v. *McLaren*, 6 Q. B. 891; *Miles* v. *Furber*, L. R., 8 Q. B. 77; *Brown* v. *Sims*, 17 S. & R. 138; *Bevan* v. *Crooks*, 7 W. & S. 452; *contra*, *vide Elford* v. *Clark*, 2 Brev. (S. C.) 88.

Similarly, goods sent to an auctioneer to be sold, are exempt from distress while on his premises: *Williams* v. *Holmes*, 8 Ex. 861; *Brown* v. *Arundell*, 10 C. B. 54; *Adams* v. *Crane*, 3 Tyrwh. 327; *Himely* v. *Wyatt*, 1 Bay (S. C.) 102. But the goods are only exempted from the distress of the auctioneer's landlord. Hence, where an auction sale was to take place on the premises of A., and B. requested the auctioneer to include in the sale, certain goods of his, and the goods were accordingly delivered to the auctioneer, upon the premises of A., and were there distrained by A.'s landlord, it was held that they were not exempt: *Lyons* v. *Elliott*, L. R., 1 Q. B. Div. 210.

Goods pledged with a pawnbroker may not be distrained by the pawnbroker's landlord: *Swire* v. *Leach*, 18 C. B. (N. S.) 479.

The exemption for the benefit of trade, is for the benefit of the trade carried on by the tenant: *Muspratt* v. *Gregory*, 1 M. & W. 633. Hence it is immaterial who the person delivering the goods to be "wrought, worked up or managed," may be. So where one butcher delivers cattle to another to be slaughtered, they are exempt from distress, for rent due from the second butcher: *Brown* v. *Shevill*, 2 Ad. & El. 138.

The question as to how long goods left to be worked up, or repaired, &c., are exempted after the work is completed, and the goods are ready to be removed, seems never to have been passed upon. It seems probable, however, that they are exempt until the owner has had a reasonable time to remove them, and that the court would be inclined to be lenient in its construction of what constitutes a reasonable time. See 22 E. 4, 49 b.

Where the landlord has goods of a stranger, brought upon the demised premises, he cannot distrain them, although they were originally there and were removed by the owner, without his consent after rent was in arrear: *Paton* v. *Carter*, Cababé & Ellis (Eng. Q. B. D.) 183. So where the landlord expressly or impliedly agrees that the goods of the stranger shall not be distrained, the right of distress is waived: *Horsford* v. *Webster*, 5 Tyrwh. 409.

The rule for the distress for rent of cattle of a stranger trespassing upon the demised premises, seems to be that they are liable to distress as soon as they come on the premises: 7 Henry 7, 1 pl. 1; Co. Litt. 47. But if they come on the demised premises through the failure of the tenant to fence against them, they are not distrainable until levant and couchant, in order that the owner may have time to remove them: 3 Blk. Com. 9. In this country, in a case where the judge delivering the opinion was inclined to protest against the rule allowing the landlord to distrain the goods of a stranger found on the demised premises, it was held, that where the owner consented to his animals being upon the demised premises, they were liable to distress: *Reeves* v. *McKenzie*, 1 Bailey (S. C.) 497.

LOUIS M. GREELEY.

Chicago, Ill.

RECENT AMERICAN DECISIONS.

Supreme Court of Minnesota.

ROSS *v.* SILVER AND COPPER ISLAND MINING COMPANY OF MINNESOTA ET AL.

Where a corporation is organized under a statute which permits such corporations to sell their stock and provides that stock so sold purporting to be full paid shall not